

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
Western Division
No. 5:15-cv-00097-BO

KIRSTEN MESSMER,)	<u>MOTION TO DISMISS</u> <u>COMPLAINT</u> <u>FED. R. CIV. P. 12</u>
Plaintiff)	
)	
v.)	
)	<u>MOTION TO DISMISS</u> <u>COMPLAINT</u> <u>FED. R. CIV. P. 12</u>
DONNIE HARRISON, in his Official capacity as Sheriff of Wake County, North Carolina, PAT MCCRORY, in his official capacity as Governor of North Carolina, ROY COOPER, in his official capacity as Attorney General of North Carolina, and FRANK L. PERRY, in his official Capacity as Secretary of the North Carolina Department of Public Safety.)	
Defendants)	

NOW COME Defendants Pat McCrory, Governor of the State of North Carolina, Roy Cooper, Attorney General of North Carolina, and Frank L. Perry, Secretary of the North Carolina Department of Public Safety each in their official capacities, by and through Special Deputy Attorney General Hal F. Askins, and Assistant Attorney General J. Joy Strickland and move this Court to dismiss this matter with prejudice pursuant to Rules 12(b)(1), 12(b)(2) and 12(b)(6) of the Federal Rules of Civil Procedure. Defendants' Motion to Dismiss should be granted on the following grounds:

1. The Complaint must be dismissed pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction, as Defendants are immune from suit under the Eleventh Amendment.

2. The Complaint must be dismissed pursuant to Rule 12 (b)(2) and 12 (b)(6) of the Federal Rules of Civil Procedure for lack of personal jurisdiction over all named Defendants, as Plaintiff has alleged no facts to establish that the named Defendants constitute “persons” under 42 U.S.C. § 1983, such that personal jurisdiction is conferred.

3. The complaint must be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief may be granted, as Plaintiff has not stated facts or otherwise shown that Defendants have a sufficient connection to the enforcement of NCGS Chapter 14, Article 54B to abrogate their Eleventh Amendment immunities.

WHEREFORE, Defendants move the Court for an Order dismissing all of Plaintiff's claims, with prejudice, pursuant to Rules 12(b)(1), 12 (b)(2), and 12(b)(6) of the Federal Rules of Civil Procedure.

Respectfully submitted, this the 6th day of April, 2015.

Roy Cooper
ATTORNEY GENERAL

/s/Hal F. Askins
Hal F. Askins
Special Deputy Attorney General
North Carolina Department of Justice
P. O. Box 629
Raleigh, North Carolina 27602-0629
Telephone: (919) 716-6725

Facsimile: (919) 716-6552
Email: haskins@ncdoj.gov
N.C. Bar No: 9681

/s/ J. Joy Strickland
J. Joy Strickland
Assistant Attorney General
N.C. Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602
Telephone: (919) 716-6725
Facsimile: (91) 716-6552
Email: jstrickland@ncdoj.gov
State Bar No. 25695

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing MOTION TO DISMISS with the Clerk of Court using the CM/ECF system, and served a copy on the following by depositing same in the United States mail, postage prepared, addressed to:

Camden R. Webb, Esq.
Williams Mullen
301 Fayetteville Street, Suite 1700
Raleigh, North Carolina 27601
Attorney for Plaintiff

Andrew H. Erteschik
Poyner & Spruill, LLP
301 Fayetteville Street, Suite 1900
Raleigh, North Carolina 27602

J. Nicholas Ellis
Poyner & Spruill, LLP
130 S. Franklin Street
Rocky Mount, North Carolina 27802
Attorneys for Defendant Harrison

This the 6th day of April, 2015.

/s/ Hal F. Askins
Hal F. Askins
Special Deputy Attorney General